

Message Text

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ACTION EUR-12

INFO OCT-01 IO-11 ISO-00 AID-05 CEA-01 CIAE-00 COME-00

EB-07 EA-09 FRB-01 INR-07 NEA-10 NSAE-00 USIA-15

OPIC-06 SP-02 TRSE-00 CIEP-02 LAB-04 SIL-01 OMB-01

ITC-01 AGR-10 /106 W

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R 091202Z MAR 76

FM AMEMBASSY BONN

TO SECSTATE WASHDC 7029

INFO AMEMBASSY BRUSSELS

AMEMBASSY COPENHAGEN

AMEMBASSY DUBLIN

AMEMBASSY LONDON

AMEMBASSY LUXEMBOURG

AMEMBASSY PARIS

AMEMBASSY THE HAGUE

AMEMBASSY ROME

USDEL MTN GENEVA

USMISSION EC BRUSSELS

UNCLAS SECTION 01 OF 02 BONN 03890

E.O. 11652: N/A

TAGS: ETRD, GW

SUBJ: EUROPEAN COURT STRIKES DOWN FRG ALCOHOL IMPORT
BARRIERS

REF: (A) STATE A-6341; (B) BONN A-566, NOV. 14, 1974

1. SUMMARY: THE EUROPEAN COURT RULED FEBRUARY 17 THAT
THE FRG SPIRITS MONOPOLY WAS IN VIOLATION OF THE
EUROPEAN COMMUNITY TREATY IN ITS IMPOSITION OF DUTIES
ON UNPROCESSED ALCOHOL IMPORTED FROM OTHER EC MEMBER
COUNTRIES. THESE DUTIES, DESIGNED TO SUPPORT HIGH
PRICES PAID TO GERMAN ALCOHOL PRODUCERS, HAD
PREVENTED SIGNIFICANTLY CHEAPER IMPORTS FROM
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COMPETING IN GERMANY. AS A CONSEQUENCE OF THE

COURT DECISION, THE FRG IS RAISING THE TAX ON ALL ALCOHOLIC PRODUCTS, DOMESTIC AND IMPORTED, MOST OF WHICH INCREASE WILL BE BORNE BY THE CONSUMER. END SUMMARY.

2. EFFECTIVE FEBRUARY 24 THE FRG RAISED THE TAX ON UNPROCESSED ALCOHOL BY TEN PERCENT FROM DM1500 TO DM1650 PER HECTOLITER. THE REASON FOR THIS MOVE WAS A DECISION BY THE EUROPEAN COURT IN LUXEMBOURG ON FEBRUARY 17 THAT A PROTECTIVE TARIFF WHICH THE FRG HAD PLACED ON ALL IMPORTS OF ALCOHOL WAS CONTRARY TO ARTICLE 37 OF THE EC TREATY. IN PRACTICE THE FRG SPIRITS MONOPOLY HAD BEEN PAYING GERMAN FARMERS DM630 FOR A HECTOLITER OF 100 PERCENT ALCOHOL, AND SELLING THIS ALCOHOL, AFTER PUTTING IT THROUGH A PURIFICATION PROCESS, TO DISTILLERS FOR FROM 370 TO 410 MARKS PER HECTOLITER. FOREIGN PRODUCERS HAD BEEN OFFERING RAW ALCOHOL AT PRICES RANGING FROM 80 TO 150 MARKS PER HECTOLITER.

3. THE FRG SPIRITS MONOPOLY HAD BEEN TAKEN TO COURT BY A GERMAN IMPORTER, WOLFGANG MIRITZ GMBH, WHO HAD ARGUED THAT AN FRG LAW OF 1970 BY WHICH HE WAS FORCED TO PAY A COMPENSATORY DUTY TO THE MONOPOIY FOR SPIRITS HE HAD IMPORTED FROM ITALY WAS IN VIOLATION OF THE EC TREATY. THE FRG LAW PROVIDED THAT, IN ORDER TO PROTECT THE PRODUCERS OF AGRICULTURAL STAPLE COMMODITIES WHICH CAN BE DISTILLED INTO SPIRITS AND IN ORDER TO COMPENSATE FOR THE DIFFERENCE IN PRICES OF DOMESTIC SPIRITS AND IMPORTED SPIRITS, A SPECIAL COMPENSATORY TAX SHALL BE LEVIED ON IMPORTED SPIRITS AND IMPORTED DISTILLATES FROM WHICH SPIRITS CAN BE MADE WHENEVER SUCH SPIRITS OR DISTILLATES ARE NOT OTHERWISE SUBJECT TO CUSTOMS DUTIES UNDER THE NATIONAL --- OR WHERE APPROPRIATE --- UNDER COMMON CUSTOMS TARIFF OF THE EC. IN AN INITIAL FINDING IN JULY 1972 AN FRG FISCAL COURT IN HAMBURG FOUND IN MIRITZ FAVOR DECLARING THE FRG DUTY TO BE UNCONSTITUTIONAL. THE FRG CUSTOMS DIRECTORATE UNCLASSIFIED

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APPEALED THE DECISION TO THE FEDERAL FISCAL COURT WITH THE MINISTRY OF FINANCE INTERVENING ON THE SIDE OF THE CUSTOMS DIRECTORATE. THE FEDERAL FISCAL COURT STAYED THE PROCEEDINGS IN THE MAIN ACTION UNTIL THE EUROPEAN COURT RULED ON THE COMPATIBILITY OF THE GERMAN LAW WITH THE EC TREATY, SPECIFICALLY ARTICLE 37.

4. THE EC COURT RULED THAT ARTICLE 37 AIMS AT ENSURING THE FUNDAMENTAL RULE OF FREE CIRCULATION OF GOODS WITHIN THE EUROPEAN COMMUNITY, IN PARTICULAR BY ABOLISHING CUSTOMS DUTIES AND CHARGES OF EQUIVALENT EFFECT. SINCE ARTICLE 37 PROHIBITS DISCRIMINATION BETWEEN NATIONALS OF DIFFERENT MEMBER STATES IN THE PROCURING AND MARKETING OF GOODS, THE COURT CONCLUDED THAT ITS APPLICATION IS NOT LIMITED TO IMPORTS AND EXPORTS DIRECTLY OPERATED BY A STATE MONOPOLY, BUT EXTENDS TO ALL OPERATIONS RELATED TO

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THE EXISTENCE OF THE MONOPOLY AND BEARING ON SAID
FREE CIRCULATION OF GOODS, WHETHER MONOPOLIZED OR
NOT. ARTICLE 37 WOULD THUS APPLY TO ALL CHARGES
WHICH DISCRIMINATE BETWEEN IMPORTED GOODS AND
DOMESTIC GOODS COMING UNDER THE MONOPOLY.

5. TO KEEP GERMAN ALCOHOL PRODUCERS COMPETITIVE
THE SPIRITS MONOPOLY HAS INCREASED THE TAX ON ALL
ALCOHOL, DOMESTIC AND IMPORTED, BY TEN PERCENT,
WHILE AT THE SAME TIME LOWERING THE PRICE AT WHICH
IT SELLS TO DISTILLERS TO 183 MARKS PER HECTOLITER.
SUCH MEASURES WILL INSURE THAT GERMAN FARMERS WILL
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CONTINUE TO RECEIVE HIGH PRICES FOR THEIR ALCOHOL
DESPITE THEIR HAVING TO COMPETE WITH IMPORTS. THE
END EFFECT ON THE CONSUMER WILL BE HIGHER PRICES
PAID FOR A BOTTLE OF SPIRITS SINCE THE LOWER PRICES
PAID BY DISTILLERS TO THE NATIONAL MONOPOLY
WILL RESULT IN DECLINING STATE REVENUE FROM THIS
SECTOR, A DECLINE WHICH WILL HAVE TO BE COMPENSATED
BY THE HIGHER TAX. THUS, PARADOXICALLY, THE COURT
DECISION WHICH APPARENTLY OPENED THE FRG TO CHEAPER
ALCOHOL IMPORTS WILL RESULT IN HIGHER CONSUMER PRICES.
ADDITIONAL PRICE INCREASES CAN ALSO BE EXPECTED SINCE,
WELL BEFORE THE COURT DECISION, THE FRG HAD ALREADY
DECIDED TO RAISE THE TAX BY 300 MARKS PER HECTOLITER
EFFECTIVE JANUARY 1, 1977.
HILLENBRAND

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CUSTOMS DUTIES, GOVERNMENT MONOPOLIES, ALCOHOLS, IMPORT CONTROLS
Control Number: n/a
Copy: SINGLE
Draft Date: 09 MAR 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976BONN03890
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760088-1029
From: BONN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760381/aaaacttv.tel
Line Count: 202
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 76 STATE A-6341, 76 BONN A-566
Review Action: RELEASED, APPROVED
Review Authority: ShawDG
Review Comment: n/a
Review Content Flags:
Review Date: 27 AUG 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <27 AUG 2004 by meiwc>; APPROVED <09 DEC 2004 by ShawDG>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: EUROPEAN COURT STRIKES DOWN FRG ALCOHOL IMPORT BARRIERS
TAGS: ETRD, GE, EUROPEAN COURT
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006